

**MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF
ALBUQUERQUE AND THE ALBUQUERQUE BERNALILLO COUNTY WATER
UTILITY AUTHORITY**

This Memorandum of Understanding ("MOU") is entered into on the date last signed by and between the City of Albuquerque ("City") and the Albuquerque Bernalillo County Water Utility Authority ("Water Authority") and shall be effective on the 1st day of July, 2013.

WHEREAS, Laws 2003, Chapter 437, (codified as NMSA 1978, § 72-1-10, as amended by the Laws of 2005, Chapter 345) created the Albuquerque Bernalillo County Water Utility Authority ("Water Authority") as a political subdivision of the state of New Mexico granted all powers necessary to operate a public water and wastewater utility; and

WHEREAS, although the City and the Water Authority are fully independent entities, each recognizes that it is mutually beneficial to continue the provision of certain shared services between the parties.

WHEREFORE, IT IS AGREED between the City and the Water Authority that:

1. Term. This MOU shall commence on July 1, 2013, and shall remain in full force and effect until June 30, 2018, unless sooner supplemented, amended, or terminated by written agreement of both the City and the Water Authority.

2. Prior Agreements. All prior MOU's and amendments thereof are of no further effect, void and deemed terminated as of June 30, 2013. This termination shall not be applicable to: licenses, leases, easements or other real property arrangements; agreements or contracts executed after July 1, 2013; or agreements or contracts that are identified on Exhibit "A" attached and incorporated herein.

3. Employee Benefits. The City and the Water Authority agree that the Water Authority shall participate in the local government employee benefits pool of core benefit programs administered by the City, subject to an administrative fee and the terms and conditions that the City negotiates from time to time with vendors. This core of benefit programs includes medical, dental, vision, Basic and Supplemental Life Insurance. Water Authority participation, if any, with Voluntary Benefit programs such as Deferred Compensation, Legal, Auto/Home, Long Term Care, Flexible Spending Accounts, Accident, Whole Life, and Critical Illness are the responsibility of the Water Authority and the respective vendor(s). For both core and voluntary benefit programs, the Water Authority shall administer and be responsible for working with insurance vendors regarding enrollment, transfer of eligibility information, billing, and remittance. A separate agreement between Water Authority and the City (Intergovernmental Agreement)

will detail the responsibilities of both parties. Water Authority employees shall no longer participate in City Wellness programs, but shall continue to have use of the City/County gym upon a mutually agreed cost allocation plan.

4. Financial and Accounting Services. Effective July 1, 2013, the City and the Water Authority agree as follows:

a. Accounting. The City shall provide all accounting services necessary for preparation of the Water Authority's Comprehensive Annual Financial Report for Fiscal Year 2013. The City shall be responsible for preparation of all tax filings and the delivery of IRS Form 1099's for transactions in Fiscal Year 2013. It is not anticipated that the parties will share other accounting services thereafter. The City will ensure that the Water Authority has access to the historical data currently contained in Hyperion, GEAC, DSS, Empath, PeopleSoft and other archival databases files to the extent such files are not or cannot be transferred to the Water Authority. Such historical data may be stored in different formats or software at the City's discretion. Any additional accounting services may be shared based on the direct cost of the service or other mutually agreed upon cost allocation plan or method.

b. Payroll. Effective June 28, 2013, the Water Authority will perform all payroll related functions for Water Authority employees completely independent of the City payroll processes. The City will ensure that the Water Authority has access to the historical data currently contained in Hyperion, GEAC, DSS, Empath, PeopleSoft and other archival payroll, PERA, FICA, RHC and insurance premium files to the extent such files are not or cannot be transferred to the Water Authority. Such historical data may be stored in different formats or software at the City's discretion. The City shall maintain records of and respond to inquiries concerning any payroll garnishments of Water Authority employees' wages which pre-date July 1, 2013.

c. ITSD. The City Information Technology Services Division (or successor division) shall provide services for the Water Authority's continued use of the City's data center/network/telecommunications/radio infrastructure along with space and ancillary services for Water Authority servers based on the direct cost of the service as mutually agreed. The cost of any improvement (for network, telecommunication or any other purpose) shall be borne by the party requesting such work.

d. Risk Management. The Water Authority shall provide its own risk management related services starting July 1, 2013. The parties agree that the Water Authority, by its annual "CORA" transfer payments through July 1, 2013, has fully reimbursed the City for the complete cost of coverage attributable to Water Authority claims and losses for occurrences prior to July 1, 2013.

i. The City shall retain responsibility to provide risk management related services for all claims for which the occurrence date is on or before June 30, 2013 and for which Water Authority makes claim to the City Risk Management Division as provided herein. All claims must be in writing, specifying the name of the claimant, the date of occurrence, and place and details of the claim. Water Authority shall deliver notice to the City of any claim no later than September 30, 2013. Notice shall be delivered to: City of Albuquerque, Risk Management Division, Attention: Peter Ennen, 1 Civic Plaza, Suite 9006, Albuquerque, NM 87103.

ii. The City has the right to select counsel, to make investigation of the circumstances of the claim, and to make payments of judgments or settlements as the City deems necessary. In the event a claim is subject to arbitration or mediation, the City is entitled to exercise all of the rights of the Water Authority in the choice of arbitrators or mediators and in the conduct of any arbitration or mediation proceeding.

iii. The Water Authority shall not admit any liability, make any settlement, pay any damages or assume any duty or obligation for any claim without the prior written consent of the City.

iv. The Water Authority shall immediately forward to the City every demand, notice, summons or other process received by the Water Authority or the Water Authority's representatives about any claim. The Water Authority shall cooperate with the City and, at the City's request, the Water Authority shall assist the City in responding to the claim and making settlements. The Water Authority shall attend hearings and trials and help in securing and giving evidence at the City's request.

v. If the City makes any payment, the City shall receive all of the Water Authority's rights of recovery against any persons or organizations. The Water Authority shall assist the City in whatever way is necessary to secure such rights. When a claim is made, the Water Authority shall do nothing to thwart the City's recovery of amounts paid to other parties who might be responsible for the claim.

vi. The City may deny coverage for any claims in which the Water Authority does not provide notice or handle in accordance with this subparagraph. The City may elect in its sole discretion to purchase an insurance policy to cover any or all of the risk management services described herein.

f. Treasury/Investment Pool. The City shall allow transfer and divest itself of all control and interest of any Water Authority funds which are currently in the control of the City Treasurer's investment pool as of July 1, 2013. The City will assist and cooperate in any audit of the tracking and accounting of such funds which concerns the period before July 1, 2013. The Water Authority shall provide its own treasury services, including but not limited to payment and remittance processing, cash management, investments, banking, and lockbox services and paying agent services as of July 1, 2013.

g. Procurement. The Water Authority will provide its own procurement space, personnel, and processing systems, including the issuance of purchase orders, beginning July 1, 2013. The Water Authority may use the City's SicommNet system until September 30, 2013, for some of its procurements, in which case it will reimburse the City a pro rata share of the City's SicommNet contract costs based on the parties' respective number of procurements initiated in SicommNet in a given month. After September 30, 2013, the Water Authority may continue using the City's SicommNet system if it obtains SicommNet's permission to do. Water Authority shall pay the City a mutually agreeable cost allocation for its use of the system after September 30, 2013. The City will assist the Water Authority to locate, copy and transfer any archival procurement documentation from the period prior to July 1, 2013 as needed. The Water Authority and City agree that either party may purchase goods and services under the procurement contracts of the other party. The City shall not be responsible for the Water Authority's procurements, including but not limited to supervision of the Water Authority's procurement personnel, process, procedures, or rules.

h. City Use of Water Authority Billing System. The Water Authority agrees to continue to provide the City use of its billing and collection system for the City Solid Waste Department and shall provide the City access to the historical data contained in that system. The Water Authority shall continue to prepare liens and lien releases as necessary and appropriate for collections for both the Water Authority and City Solid Waste Department. The City Clerk shall continue to execute such collection liens and lien releases as necessary to enforce collection activities for both the Solid Waste Department and the Water Authority. The City's use of the billing and collection system will be based on the direct cost of the service or other mutually agreed upon cost allocation plan or method.

i. Notice to Terminate Services. The Water Authority or the City may terminate any or all of the financial services set out in (a) through (g) above upon one year written notice to the other party. Termination by either party of the City's use of the Water Authority billing and collection system shall require three years notice to the other party. This paragraph is not intended to modify or govern the City's obligation to provide risk management services under paragraph 4(d) herein.

5. Storm Drain Stations. The Water Authority and its employees shall be responsible for maintaining and operating the City's Storm Drain pump stations as provided in a separate agreement.

6. Governmental Access Services. The City shall provide recording and production services and televise Water Authority meetings or programming on governmental access channel 16 as requested by the Water Authority. Water Authority shall compensate the City for the cost of such services according to the

rate schedule provided by the GOV TV manager.

7. Real Property.

a. **Use of City Real Property.** The Water Authority may continue to use for its operations City property that is currently occupied by the Water Authority and that has not been transferred or was not eligible for transfer to the Water Authority by state law. A list of the property currently subject to lease payments is attached hereto as Exhibit "B". This list is not intended to be exhaustive or to include properties subject to a separate agreement. Lease payments shall be based on a mutually agreed upon cost allocation plan or method, which may be updated annually. Either party may terminate the lease of such City real property upon one year notice.

b. **Use of Water Authority Real Property.** It is not anticipated that there will be any changes to the current City uses of real property owned by the Water Authority and the parties agree that existing uses are satisfactory. Provided, however the parties recognize that certain properties may require transfer documentation pursuant to Paragraph 7(c). Any changed or additional uses of Water Authority real property by the City will be the subject of a subsequent agreement negotiated based on a mutually agreed upon cost allocation plan or method. Such plan or method shall be updated annually.

c. **Transfer documentation.** While City real and personal property pertaining to the Water Authority was transferred by operation of law on June 21, 2003, in accordance with Laws 2003, Chapter 437, (codified as NMSA 1978, § 72-1-10)(as amended by the Laws of 2005, Chapter 345), it is expressly recognized by the City and the Water Authority that additional transferring documentation shall be required to properly document title to such properties, real, personal, mixed or otherwise, and all extensions, enlargements and improvements thereto. In furtherance of completing the transfer or assignment of any property to the Water Authority, the City and Water Authority agree that the present use and character of any parcel contemplated for transfer or assignment shall not be altered unless the parties agree otherwise in writing. Further, the parties agree that the present use and character of any parcel shall be given weight in the event it is unclear whether such property was acquired prior to the creation of the Water Authority using City enterprise or general fund monies or by City water utility enterprise fund monies. Accordingly, the City agrees to provide any deeds, assignments, title transfers or other relevant documentation necessary to perfect title to all properties, real, personal, mixed or otherwise that the parties agree transferred by operation of law.

8. **Waterline breaks.** The parties intend that the City will provide clean-up and de-icing services with respect to waterline breaks, for which the Water Authority will be responsible for the reasonable cost allocation. These respective rights and obligations will be detailed in a separate agreement.

9. Biopark Silvery Minnow Refugium. The City shall retain full responsibility for management and operation of the silvery minnow fish hatchery located at the City Biopark and, as detailed in a separate agreement, the Water Authority will contribute to the direct cost of the Refugium operation based on a mutually agreed upon cost allocation plan or method.

10. Soil Amendment Facility. Each party will research and investigate the scope of previous use and current condition of the Aviation and Open Space parcels adjacent to Soil Amendment Facility. Each party agrees to provide to the other any records or environmental information, including consultant reports, which may be germane to the investigation in order to achieve agreement on whether any future action, including remediation or compensation, is appropriate. If the parties cannot agree, they may seek resolution under the remedies described in Section 23 herein. The Water Authority does not intend to use the subject parcels in any manner.

11. Lab Testing. If available, the Water Authority shall provide water, soils and other lab testing services to the City based on the direct cost or other mutually agreed upon cost allocation plan or method.

12. Composting Material. From time to time, the City and the Water Authority shall enter into written agreements for the exchange and/or sale of compost and compostable materials which shall be based upon the direct costs to each entity as mutually agreed.

13. Legal Services. The Water Authority shall provide its own legal services. However, legal support for the Customer Service billing activities of the Water Authority and City Solid Waste Management Department shall remain a responsibility of the City Legal Department. The Water Authority and the City agree that the Water Authority shall be billed for such services when on behalf of the Water Authority by direct bill evidenced by a time sheet billing in quarter hour increments or as otherwise negotiated. For collection efforts on behalf of both Water Authority and the City, Water Authority shall be billed for its pro-rata share of such services. This paragraph is not intended to modify or govern the provision of legal services by the City as a component of the delivery of risk management services under paragraph 4(d) herein.

14. The Water Authority or City may utilize additional services not expressly listed in this MOU, on such terms and conditions as may be mutually agreed upon, if requested in writing by either party and based upon the direct cost of the service or other mutually agreed upon cost allocation plan or method.

15. The City and Water Authority will jointly develop a process for design and construction of utility infrastructure work required under the franchise agreement. The Water Authority shall make best efforts to notify the City of its

utility plans early in the planning process and to coordinate with the City to minimize impact on the parties' respective infrastructure.

16. The Water Authority will actively support and participate in the City's DRB, EPC, DRC and other Planning processes and will maintain a staff presence at the City's "one-stop shop." The Water Authority shall designate one or more representatives in this process, who will promptly review planning and design documents and provide the Water Authority's feedback in a timely manner.

17. The Water Authority agrees to continue to provide the City use of its Utilities Customer Care and Billing system. Upon request of a City department, the Water Authority agrees to provide that department's billing in a detailed billing summary. The Water Authority shall assign one account representative within its organization to be the main point of contact for City departments to use for questions regarding water service and billing.

18. No ambiguity shall be construed against any party based on the identity of the author or authors of this MOU. The parties acknowledge that this MOU was negotiated as an arm's length transaction and that each party was represented by counsel.

19. Any liability incurred by either party in connection with this MOU is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et. seq. NMSA 1978, as amended. Neither party waives sovereign immunity, any defense and or any limitation of liability pursuant to law. No provision in this MOU modifies or waives any provision of the New Mexico Tort Claims Act.

20. By entering into this MOU, the parties do not intend to create any right, title or interest in or for the benefit of any person other than the parties to this MOU. No person shall claim any right, title or interest under this MOU or seek to enforce this MOU as a third party beneficiary of this MOU.

21. Each party shall abide by all applicable federal and state laws and regulations. In any action or legal dispute arising from this MOU, the parties agree that the laws of the State of New Mexico shall govern and venue shall be in Bernalillo County.

22. The City and the Water Authority agree to use any and all methods of dispute resolution, up to and including mediation or arbitration, to resolve conflicts arising under this Agreement, the expenses of which shall be shared equally by the parties. Disputes shall be first discussed by representatives of each party having authority, and thereafter escalated within the respective agencies if resolution cannot be reached. The parties agree that any litigation brought under this MOU shall be brought the state District Court of Bernalillo County and shall be subject to the laws of the State of New Mexico. Each party

shall be responsible for its own costs and attorneys' fees with respect to any such dispute.

In the event that the either party is in dispute regarding a cost allocation plan or method for services, an external audit firm selected to perform services by the City and Water Authority shall be engaged to determine the appropriate methodology and cost. The parties shall equally bear the cost of the auditor's services.

23. Neither the City nor the Water Authority shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement.

24. This MOU incorporates all the agreements, covenants, and understandings between the parties hereto concerning the services to be performed hereunder, and all such agreements, covenants and understandings have been merged into this MOU. This MOU expresses the entire MOU and understanding between the parties with respect to the topics set forth herein. No prior agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this MOU or as specifically reserved in Paragraph 2 herein.

25. In case any one or more of the provisions contained in this MOU or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein and any other application thereof shall not in any way be affected or impaired thereby.

26. This Agreement shall not be effective unless signed by both parties.

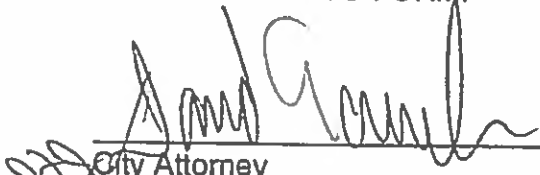
IN WITNESS WHEREOF, each Party has executed this agreement on the date written.

CITY OF ALBUQUERQUE

By: 
Robert J. Perry, Chief Administrative Officer

Date: 8/12/13

APPROVED AS TO FORM:


City Attorney

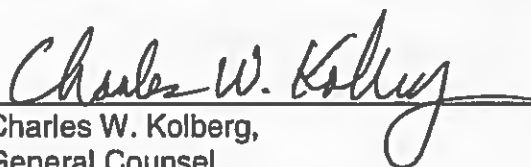
City_WUA_MOU
July 2013

ALBUQUERQUE BERNALILLO COUNTY WATER UTILITY AUTHORITY

By: 
Mark S. Sanchez, Executive Director

Date: 8/9/13

APPROVED AS TO FORM:


Charles W. Kolberg,
General Counsel

**MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF
ALBUQUERQUE AND THE ALBUQUERQUE BERNALILLO COUNTY WATER
UTILITY AUTHORITY**

Exhibit A
Existing Agreements

Pursuant to Section 2 of this Agreement, all prior MOU's and amendments thereof are of no further effect, void and deemed terminated as of June 30, 2013. This termination shall not be applicable to: licenses, leases, easements or other real property arrangements; agreements or contracts executed after July 1, 2013; or agreements or contracts identified below.

1. Franchise Agreement;
2. Bear Canyon Arroyo-Aquifer Storage and Recharge-Letter Agreement;
3. Landfill Dust Control with Reuse Water-MOU;
4. Inspection and Maintenance of Fire Hydrants-MOU;
5. Rio Grande Silvery Minnow Refugium-JPA;
6. Design and Construction Coordination (One Stop Shop); IN DRAFT
7. Financial Guarantees for Development Infrastructure; IN DRAFT
8. Storm Water Pump Stations Operations; IN DRAFT
9. Street Sweeping and De-icing Coordination; IN DRAFT
10. Cooperative Agreement for Excavation and Barricade Permit Fees;
11. Sanitary Sewer Overflow/Storm Drain Mitigation; IN DRAFT
12. Aviation-Double Eagle II Infrastructure; IN DRAFT
13. Irrigation Surcharge MOU with Parks and Recreation; IN DRAFT
14. Water Rights Leases and Joint Use of City Property; IN DRAFT
15. Employee Benefits Agreement. IN DRAFT

Exhibit B
Property Uses
(with current cost allocation)

Allocated Cost by Building		Cost	Sq. Footage	Cost/Sq. foot
	City County Building	\$ 55,688	18,249	
	Energy Management	\$ 518		
	Facilities Security	\$ 29,753		
	CC Ops & Maint	\$ 251,850		
	CC Security	\$ 42,676		
	Facilities Maint	\$ -		
		\$ 380,485	18,249	\$ 20.85
	Plaza Del Sol	\$ 2,096	1,024	
	Energy Management	\$ 29		
	Facilities Security	\$ 1,670		
	CC Ops & Maint	\$ -		
	CC Security	\$ -		
	Facilities Maint	\$ 16,261		
		\$ 20,056	1,024	\$ 19.59
	Pino & 4th Yards	\$ 7,878	29,721	
	Energy Management	\$ 843		
	Facilities Security	\$ 48,457		
	CC Ops & Maint	\$ -		
	CC Security	\$ -		
	Facilities Maint	\$ -		
		\$ 57,178	29,721	\$ 1.92
	Total	\$ 457,718	48,994	\$ 9.34